

REMARKS

Summary Of The Office Action & Formalities

Claims 1-10 are all the claims pending in the application. By this Amendment, Applicant is canceling claim 10, amending claims 1, 9 and 3, and adding new claims 11-18. No new matter is added.

Applicant thanks the Examiner for acknowledging the claim to foreign priority and for confirming that the certified copy of the priority document was received.

Applicant also thanks the Examiner for initialing the references listed on form PTO/SB/08 submitted with the Information Disclosure Statement filed on March 21, 2005.

The drawings are objected to under 37 C.F.R. § 1.83(a). Applicant is amending Fig. 2 to address the Examiner's objection.

The abstract and specification are objected to for the reasons set forth at page 3 of the Office Action. Applicant is amending these parts of the application to address the Examiner's objections.

The prior art rejections are summarized as follows:

1. Claims 1, 2, and 4-8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Colombo (US 3,905,365) in view of Crose (US 5,137,528).
2. Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Colombo (US 3,905,365) and Crose (US 5,137,528) as applied to claims 1 and 2 above, and further in view of Leonard et al. (US 4,581,022).

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 103

1. Claims 1, 2, And 4-8 Over Colombo (US 3,905,365) In View Of Crose (US 5,137,528).

In rejecting claims 1, 2, and 4-8 over Colombo (US 3,905,365) in view of Crose (US 5,137,528), the grounds of rejection state:

Regarding claim 1, Colombo discloses means for actuating fluid spray device such that the actuation element is lateral to the unit and is displaceable in a direction different to the displacement direction of the spray means. Colombo does not disclose a reservoir that is a sealed unit separate from the body.

Crose discloses a spraying device comprising a body (14) provided with a spray orifice (17), a reservoir (1) containing the fluid to be sprayed, spray means (15), the reservoir being closed in a sealed manner before the spray device is actuated for the first time, the body including reservoir opening means (16) adapted to open the reservoir from the body, the reservoir being filled with fluid and sealed hermetically before it is assembled in the body, the body including receiver means (14) for receiving the reservoir, and later access means for enabling the filled reservoir to be assembled sideways into the body and to be secured therein.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the entire spray device of Crose (Figure 2) for the spray body portion of Colombo in order to more precisely and more ergonomically actuate the device of Crose.

Office Action at pages 4-6. Applicant respectfully disagrees.

The grounds of rejection do not establish a prima facie case of obviousness as set forth by the Manual Of Patent Examining Procedure ("MPEP") which states:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

MPEP at Section 2143. Applicant submits that at least the first and third criteria have not been met in the grounds of rejection.

Present claim 1 particularly covers a fluid spray device including actuator means adapted to actuate spray means, wherein the actuator means is displaced in a direction that is different from the displacement direction of spray means (e.g., an axial displacement for the one and a direction transverse to the axial displacement for the other).

Colombo discloses a dental injection gun including actuator means comprising a control lever 12 adapted to displace pusher rod 6, which acts on the rear of a piston housed in a syringe 1 so as to expel the syringe content. The operation of this gun is explained at column 2, line 34 to line 45. The control lever 12 is pulled rearward by the forefinger and the middle finger of the same hand so as to cause a forward displacement of the pusher rod 6 which acts on the syringe piston so as to move it forward.

Therefore, in Colombo, the control lever 12 and the syringe piston are displaced in opposite senses, but in a same direction -- not in different directions as claimed. Accordingly, even if one were to combine Colombo with Crose as set forth in the grounds of rejection, the resulting combination would not have all the features of claim 1.

Regarding, Crose, the grounds of rejection do not meet the requirement for a showing that there must be some suggestion or motivation in the prior art to modify the reference or to combine reference teachings. The Federal Circuit has clearly stated that the motivation must be clearly and specifically taught or suggested in the prior art. In *In re Lee*, the Federal Circuit

stated that the USPTO is held to a rigorous standard when trying to show that an invention would have been obvious in view of the combination of two or more references. *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), *citing, e.g., In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) (“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.”).

The Federal Circuit went on to emphasize that the “need for specificity pervades this authority.” *In re Lee* at 1433 (emphasis added) (*citing In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed”)).

Applicant respectfully submits that the current grounds of rejection do not satisfy the Federal Circuit’s rigorous standard for demonstrating that the claimed invention would have been obvious in view of Colombo and Crose.

Crose merely discloses an ampoule placed in the barrel of a conventional hypodermic syringe 14. There is no disclosure or suggestion whatsoever in this patent or in Colombo “to substitute the entire spray device of Crose (Figure 2) for the spray body portion of Colombo in order to more precisely and more ergonomically actuate the device of Crose.” Such a position is purely speculative and not supported by any citation to an actual disclosure in either applied patent.

Moreover, as explained above, the alleged combination would not lead to a dispenser device as recited in present claim 1 in which the actuator means and the spray means are moved in a different direction.

In view of at least the foregoing distinctions, the Examiner is kindly requested to reconsider and withdraw the rejection of claim 1 and claims dependent therefrom.

New Claims

For additional claim coverage merited by the scope of the invention, Applicant is adding new claims 11-18. Claim 11 is allowable at least by reason of its dependency. Claims 12-18 are allowable because the art does not teach or suggest a fluid spray device having the recited sealed reservoir and structure for dispensing fluid from the reservoir.

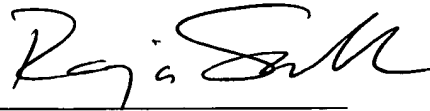
In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Amendment Under 37 C.F.R. § 1.111
U.S. Application No. 10/528,557

Attorney Docket No.: Q86514

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: February 1, 2006

Amendment Under 37 C.F.R. § 1.111
U.S. Application No. 10/528,557

Attorney Docket No.: Q86514

AMENDMENTS TO THE DRAWINGS

Figure 2 on the drawing sheet is amended to illustrate cover 100; Fig. 5 is amended to re-label reference numeral “14” as --50--.

Attachment: One Replacement Sheet